

**Introduced by Senators Romero and Runner
(Coauthor: Senator Margett)**

February 23, 2007

An act to add Section 1203.017 to the Penal Code, relating to involuntary home detention, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 959, as introduced, Romero. Involuntary home detention.

Existing law establishes a voluntary home detention program where participants are subject to electronic monitoring, as specified.

This bill would establish an involuntary home detention program, where participants would be electronically monitored, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1203.017 is added to the Penal Code, to
- 2 read:
- 3 1203.017. (a) Notwithstanding any other provision of law,
- 4 upon determination by the correctional administrator that
- 5 conditions in a jail facility warrant the necessity of releasing
- 6 sentenced misdemeanor inmates prior to them serving the full
- 7 amount of a given sentence due to lack of jail space, the board of
- 8 supervisors of any county may authorize the correctional
- 9 administrator to offer a program under which inmates committed

1 to a county jail or other county correctional facility or granted
2 probation, or inmates participating in a work furlough program,
3 may be required to participate in an involuntary home detention
4 program, which may include electronic monitoring, during their
5 sentence in lieu of confinement in the county jail or other county
6 correctional facility or program under the auspices of the probation
7 officer. Under this program, one day of participation shall be in
8 lieu of one day of incarceration. Participants in the program shall
9 receive any sentence reduction credits that they would have
10 received had they served their sentences in a county correctional
11 facility.

12 (b) The board of supervisors may prescribe reasonable rules
13 and regulations under which an involuntary home detention
14 program may operate. The inmate shall be informed in writing that
15 he or she shall comply with the rules and regulations of the
16 program, including, but not limited to, the following rules:

17 (1) The participant shall remain within the interior premises of
18 his or her residence during the hours designated by the correctional
19 administrator.

20 (2) The participant shall admit any peace officer designated by
21 the correctional administrator into his or her residence at any time
22 for purposes of verifying the participant's compliance with the
23 conditions of his or her detention.

24 (3) The use of electronic monitoring may include global
25 positioning system devices or other supervising devices for the
26 purpose of helping to verify his or her compliance with the rules
27 and regulations of the home detention program. The devices shall
28 not be used to eavesdrop or record any conversation, except a
29 conversation between the participant and the person supervising
30 the participant which is to be used solely for the purposes of voice
31 identification.

32 (4) The correctional administrator in charge of the county
33 correctional facility from which the participant was released may,
34 without further order of the court, immediately retake the person
35 into custody to serve the balance of his or her sentence if the
36 electronic monitoring or supervising devices are unable for any
37 reason to properly perform their function at the designated place
38 of home detention, if the person fails to remain within the place
39 of home detention as stipulated in the agreement, or if the person

1 for any other reason no longer meets the established criteria under
2 this section.

3 (c) Whenever the peace officer supervising a participant has
4 reasonable cause to believe that the participant is not complying
5 with the rules or conditions of the program, or that the electronic
6 monitoring devices are unable to function properly in the
7 designated place of confinement, the peace officer may, under
8 general or specific authorization of the correctional administrator,
9 and without a warrant of arrest, retake the person into custody to
10 complete the remainder of the original sentence.

11 (d) Nothing in this section shall be construed to require the
12 correctional administrator to allow a person to participate in this
13 program if it appears from the record that the person has not
14 satisfactorily complied with reasonable rules and regulations while
15 in custody. A person shall be eligible for participation in a home
16 detention program only if the correctional administrator concludes
17 that the person meets the criteria for release established under this
18 section and that the person's participation is consistent with any
19 reasonable rules and regulations prescribed by the board of
20 supervisors or the administrative policy of the correctional
21 administrator.

22 (1) The rules and regulations and administrative policy of the
23 program shall be written and reviewed on an annual basis by the
24 county board of supervisors and the correctional administrator.
25 The rules and regulations shall be given to or made available to
26 any participant upon request.

27 (2) The correctional administrator, or his or her designee, shall
28 have the sole discretionary authority to permit program
29 participation as an alternative to physical custody. All persons
30 referred or recommended by the court to participate in the home
31 detention program pursuant to subdivision (e) who are denied
32 participation or all persons removed from program participation
33 shall be notified in writing of the specific reasons for the denial
34 or removal. The notice of denial or removal shall include the
35 participant's appeal rights, as established by program administrative
36 policy.

37 (e) The court may recommend or refer a person to the
38 correctional administrator for consideration for placement in the
39 home detention program. The recommendation or referral of the
40 court shall be given great weight in the determination of acceptance

1 or denial. At the time of sentencing or at any time that the court
2 deems it necessary, the court may restrict or deny the defendant's
3 participation in a home detention program.

4 (f) The correctional administrator may permit home detention
5 program participants to seek and retain employment in the
6 community, attend psychological counseling sessions or
7 educational or vocational training classes, or seek medical and
8 dental assistance. Willful failure of the program participant to
9 return to the place of home detention not later than the expiration
10 of any period of time during which he or she is authorized to be
11 away from the place of home detention pursuant to this section
12 and unauthorized departures from the place of home detention are
13 punishable as provided in Section 4532.

14 (g) As used in this section, "correctional administrator" means
15 the sheriff, probation officer, or director of the county department
16 of corrections.

17 (h) (1) Notwithstanding any other law, upon request, the
18 correctional administrator shall provide to the police department
19 of a city where an office is located to which persons on involuntary
20 home detention report, information concerning those persons. The
21 correctional administrator shall provide the same information to
22 the Department of Justice.

23 (2) The information required by paragraph (1) shall consist of
24 the following:

25 (A) The participant's name, address, and date of birth.

26 (B) The offense committed by the participant.

27 (C) The period of time the participant will be placed on home
28 detention.

29 (D) Whether the participant successfully completed the
30 prescribed period of home detention or was returned to a county
31 correctional facility, and if the person was returned to a county
32 correctional facility, the reason for that return.

33 (E) The gender and ethnicity of the participant.

34 (3) Any information received by a police department pursuant
35 to this subdivision shall be used only for the purpose of monitoring
36 the impact of home detention programs on the community.

37 (i) It is the intent of the Legislature that home detention
38 programs established under this section maintain the highest public
39 confidence, credibility, and public safety. In the furtherance of
40 these standards, the following shall apply:

1 (1) The correctional administrator, with the approval of the
2 board of supervisors, may administer a home detention program
3 pursuant to written contracts with appropriate public or private
4 agencies or entities to provide specified program services. No
5 public or private agency or entity may operate a home detention
6 program in any county without a written contract with that county's
7 correctional administrator. However, this does not apply to the use
8 of electronic monitoring by the Department of Corrections and
9 Rehabilitation as established in Section 3004. No public or private
10 agency or entity entering into a contract may itself employ any
11 person who is in the home detention program.

12 (2) Program acceptance shall not circumvent the normal booking
13 process for sentenced offenders. All home detention program
14 participants shall be supervised.

15 (3) (A) All privately operated home detention programs shall
16 be under the jurisdiction of, and subject to the terms and conditions
17 of the contract entered into with, the correctional administrator.

18 (B) Each contract shall include, but not be limited to, all of the
19 following:

20 (i) A provision whereby the private agency or entity agrees to
21 operate in compliance with any available standards promulgated
22 by state correctional agencies and bodies, including the Corrections
23 Standards Authority, and all statutory provisions and mandates,
24 state and county, as appropriate and applicable to the operation of
25 home detention programs and the supervision of sentenced
26 offenders in a home detention program.

27 (ii) A provision that clearly defines areas of respective
28 responsibility and liability of the county and the private agency or
29 entity.

30 (iii) A provision that requires the private agency or entity to
31 demonstrate evidence of financial responsibility, submitted and
32 approved by the board of supervisors, in amounts and under
33 conditions sufficient to fully indemnify the county for reasonably
34 foreseeable public liability, including legal defense costs, that may
35 arise from, or be proximately caused by, acts or omissions of the
36 contractor. The contract shall provide for annual review by the
37 correctional administrator to ensure compliance with requirements
38 set by the board of supervisors and for adjustment of the financial
39 responsibility requirements if warranted by caseload changes or
40 other factors.

1 (iv) A provision that requires the private agency or entity to
2 provide evidence of financial responsibility, such as certificates
3 of insurance or copies of insurance policies, prior to commencing
4 any operations pursuant to the contract or at any time requested
5 by the board of supervisors or correctional administrator.

6 (v) A provision that permits the correctional administrator to
7 immediately terminate the contract with a private agency or entity
8 at any time that the contractor fails to demonstrate evidence of
9 financial responsibility.

10 (C) All privately operated home detention programs shall
11 comply with all appropriate, applicable ordinances and regulations
12 specified in subdivision (a) of Section 1208.

13 (D) The board of supervisors, the correctional administrator,
14 and the designee of the correctional administrator shall comply
15 with Section 1090 of the Government Code in the consideration,
16 making, and execution of contracts pursuant to this section.

17 (E) The failure of the private agency or entity to comply with
18 statutory provisions and requirements or with the standards
19 established by the contract and with the correctional administrator
20 may be sufficient cause to terminate the contract.

21 (F) Upon the discovery that a private agency or entity with
22 whom there is a contract is not in compliance pursuant to this
23 paragraph, the correctional administrator shall give 60 days' notice
24 to the director of the private agency or entity that the contract may
25 be canceled if the specified deficiencies are not corrected.

26 (G) Shorter notice may be given or the contract may be canceled
27 without notice whenever a serious threat to public safety is present
28 because the private agency or entity has failed to comply with this
29 section.

30 (j) Inmates participating in this program shall not be charged
31 fees or costs for the program.

32 (k) For purposes of this section, "evidence of financial
33 responsibility" may include, but is not limited to, certified copies
34 of any of the following:

35 (1) A current liability insurance policy.

36 (2) A current errors and omissions insurance policy.

37 (3) A surety bond.

38 SEC. 2. This act is an urgency statute necessary for the
39 immediate preservation of the public peace, health, or safety within

1 the meaning of Article IV of the Constitution and shall go into
2 immediate effect. The facts constituting the necessity are:
3 In order to help relieve jail overcrowding and ensure inmates
4 are serving full sentences to the extent practicable, it is necessary
5 that this act take effect immediately.

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